not, and the conduct of the parties subsequent to the contract, attaching such weight to the evidence as they may determine.

Same.—Where a contract for the sale of cross-ties to a railroad company fixed no time for their delivery, and the railroad notified the seller that it would not receive the ties after a certain date, the seller was entitled to recover damages for breach of the contract only in case the date fixed did not permit a reasonable time for performance of the contract.

Same—Measure of Damages.—Where a contract for the sale of cross-ties to a railroad is broken by the railroad, the seller is entitled to recover not merely the difference between the contract price and the market price, but the difference between the contract price and the cost of making and delivering the ties.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 43, Sales, §§ 1098-1107.]

Jury—Selection of Panel—Statutory Provision.—Under Va. Code 1904, § 3158, providing with respect to a special jury that from those summoned by the court, a panel of 20 qualified jurors shall be made, from which 16 shall be chosen by lot, it was proper to draw out 4 by lot and excuse them from service.

STONEGA COKE & COAL CO. *v.* LOUISVILLE & N. R. CO.

Nov. 22, 1906.

[55 S. E. 551.]

Contracts — Continuance — Certainty—Termination.—Plaintiff's assignor, being the owner of extensive coal lands some 12 miles from defendant's railroad, defendant, to induce the development of the land, agreed that if plaintiff's assignor would develop the land, and would build and maintain a connecting line between its plant and a station on defendant's road, and give defendant running rights over the same, defendant would transport coal and coke destined to points on its main line and empties over such connecting line free of charge. Held that, in the absence of a provision in the contract as to the time it was to run, it was unenforceable and subject to termination by the railroad company at its election.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 11, Contracts, § 996.]

NORFOLK & W. RY. CO. *v.* McDONALD'S ADM'X.

Nov. 22, 1906.

[55 S. E. 554.]

Master and Servant—Death of Servant—Negligence of Master.—Where an employee of a railroad, engaged in removing rails from a car by means of a rope and hooks attached to the rails of a track and

a rail on the car, was struck and killed by the hook attached to the rail of the track because of its straightening out and flying up when the rail on the car was caught, the accident happening so quickly that the time could not be estimated even in seconds, this did not show the railroad guilty of negligence, conceding that the engine was out of order, that the fireman who handled it was incompetent to discharge the duties of an engineer, and that there was an insufficient number of employees engaged in unloading the rails.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 955.]

Same—Evidence—Burden of Proof.—In an action for causing the death of an employee of a railroad, the burden is on the plaintiff to show negligence of the railroad.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 895.]

LANE BROS. CO. *v.* SEAKFORD.

Nov. 22, 1906.

[55 S. E. 556.]

Pleading—Declaration—Requisites in General.—A declaration must state the facts relied on as constituting the cause of action with sufficient certainty to be understood by defendant, the jury and the court.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 39, Pleading, § 105.]

Master and Servant—Injury to Servant—Declaration—Sufficiency.—A declaration, in an action for personal injury, which alleges the relation of master and servant between plaintiff and defendant, and that plaintiff was operating a hoisting engine in defendant's work, which states the duty of defendant to exercise ordinary care to furnish and maintain for plaintiff a reasonably safe place for doing the work, and which avers that unskilled servants of defendant placed dynamite near where plaintiff was working and that the dynamite caught fire, exploded and injured plaintiff in a manner described, sufficiently states a cause of action.

Same—Duty of Master—Reasonable Care—Instructions.—An instruction in an action against an employer for injuries received by an employee that it was the duty of the employer to "use ordinary and all reasonable care" to furnish and maintain a reasonably safe place for the employee in which to work, etc., and if the employer failed to exercise "ordinary and all reasonable care" in the performance of any one or all of the duties specified, and such failure was the proximate cause of the injury, the jury must find a verdict for the employee, limits the duty of the employer to the exercise of ordinary and reasonable care, and is not misleading as leading the jury to sup-